THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.6267 OF 2006

DATED: 28-03-2006

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BETWEEN

Patchipulusu Lakshmaiah,

S/o. Raghavulu, Occ: Business,

D.No.15-22-28, Kotla Bazaar,

Munthavari Centre, Chirala,

Prakasam District and others.

…PETITIONERS

AND

State of AP, rep. by its Principal Secretary,
Municipal & Urban Development Department,

Secretariat, Hyderabad and others.

…RESPONDENTS

ORDER:

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Petitioners seek a Writ of Mandamus to declare the action of the respondents in marking a portion of building properties belonging to them situated on either side of Kotla Bazaar at Munthavari Centre of Chirala Municipal limits with a direction to demolish the same for road widening as illegal and arbitrary.

Learned counsel for the petitioners submits that the petitioners are absolute owners, possessors and enjoyers of their respective sites mentioned in the writ petition situated in Kotla Bazaar at Munthavari Centre of Chirala Municipality. The petitioners and their

predecessors constructed RCC roof buildings in their respective sites after obtaining sanction plan from the then local authority. The learned counsel further submits that on 21.03.2006 and 23.03.2006 the employees of the respondents 3, 4 and 5 to 7 visited the premises of the petitioners and began marking on walls of houses of petitioners to an extent of about 20 feet depth from their respective compound walls and thereby asking petitioners to remove their buildings up to the marked portion within two days or threatened to demolish the same for the purpose of road widening.

The learned counsel further submits that for the purpose of widening the road the respondents earmarked the structures belonging to the petitioners and the respondents are proposing to demolish the same without following due procedure prescribed in law. He further submits that even under the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act') without acquiring the lands of the private citizens, portion of any property cannot be taken away for the purpose of road widening, either by way of private negotiations or by way of initiating proceedings under the Act. He further submits that the petitioners have not encroached any road and they have constructed the buildings or structures as per the approved plan only.

No doubt widening/laying of the road is in the public interest but while laying the road, if any property of private individual is coming in the way, it is for the respondents to acquire the same by following due process of law. This Court disposed of a number of writ petitions directing the respondent not to demolish the houses of the private citizens without following due process of law or private negotiations.

Having regard to the facts and circumstances of the case,
the respondents are directed not to demolish or take away any portion of the property of the petitioners and not to dispossess them without following due process of law under Section 172(2) or 174 of the Andhra Pradesh Municipalities Act, 1965.

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V. ESWARAIAH, J

March 28, 2006

DSK